

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Planned Parenthood Monte Mar,
Plaintiff,
v.

Aaron Ford, in his capacity as
Attorney General, *et. al.*,
Defendants.

Case No 3:85-cv-331-ART-CSD

**ORDER ON SUPPLEMENTAL
BRIEFING**

10 In 1985, Plaintiffs (then Eugene Glick, M.D. and Planned Parenthood of
11 Washoe County) filed a complaint (ECF No. 1) and motion for a preliminary
12 injunction (ECF No. 2), seeking to enjoin sections of Senate Bill 510, codified in
13 NRS Chapter 442, from being enforced. Plaintiffs argued that these provisions,
14 which require parental notification before an abortion is performed on certain
15 minors, were unconstitutional. The complaint alleged that the challenged
16 provisions violate the Fourteenth Amendment Due Process and Equal Clauses,
17 as well as the First Amendment.

18 On July 17, 1985, Judge Edward C. Reed granted Plaintiffs' motion for
19 preliminary injunction and issued an injunction prohibiting the enforcement of
20 NRS 442.255(1)-(4), NRS 442.257, and Section 2 of Senate Bill 510. (ECF Nos.
21 22-23); *Glick v. McKay*, 616 F.Supp. 322 (D. Nev. 1985). Defendants appealed
22 this order, and the Ninth Circuit affirmed. *Glick v. McKay*, 937 F.2d 434 (9th Cir.
23 1991). Shortly thereafter, Plaintiffs filed a motion for summary judgment in the
24 District Court on the basis of the Ninth Circuit's decision (ECF No. 68). The Court
25 granted this motion and entered judgment, declaring NRS 442.255 and 442.2555
26 unconstitutional and permanently enjoining NRS 442.255, 442.2555, and
27 442.257. (ECF No. 74.)

1 On December 1, 2023, Defendants¹ filed a motion for relief from the Court’s
 2 judgment under Fed. R. Civ. P. 60(b)(5), arguing relief from the judgment was no
 3 longer equitable because (1) *Lambert v. Wicklund*, 520 U.S. 292 (1997) had
 4 abrogated *Glick* in 1997, and (2) *Dobbs v. Jackson Women’s Health Org.*, 597 U.S.
 5 215 (2022) had eliminated the basis for the injunction in 2022. (ECF No. 83.) The
 6 Court granted Plaintiff Planned Parenthood of Mar Monte’s motion to substitute
 7 and be designated as successor Plaintiff. (ECF Nos. 103, 105.)

8 In their opposition to Defendants’ motion for relief, Plaintiff argued that
 9 there are constitutional grounds independent of the Court’s 1991 judgment,
 10 some of which were raised in the original 1985 complaint, which might justify a
 11 continued injunction against the statutory provisions at issue. (ECF No. 115 at
 12 20.) Plaintiff requested the opportunity for supplemental briefing to address such
 13 arguments. (*Id.*) In their reply brief, Defendants disagreed with the need to
 14 address these challenges but stated that the Court could order further briefing
 15 to address any questions it may have regarding implementation. (ECF No. 116 at
 16 20.)

17 The parties dispute whether the Court must consider other equitable
 18 factors in deciding this motion for relief under 60(b)(5). (ECF No. 115 at 16-20;
 19 ECF No. 116 at 9-12.); *see Am. Unites for Kids v. Rousseau*, 985 F.3d 1075 (9th
 20 Cir. 2021); *California by and through Becerra v. EPA*, 978 F.3d 708 (9th Cir. 2020).
 21 However, it is clear that a modification under Rule 60(b)(5) “must not create or
 22 perpetuate a constitutional violation.” *Rufo v. Inmates of Suffolk County Jail*, 502
 23 U.S. 367 (1992). Thus, Court must consider Plaintiff’s arguments regarding
 24 alternative constitutional grounds for maintaining the injunction.

25 Accordingly, the Court will permit the parties to supplement their briefing
 26 to address alternative constitutional grounds for maintaining the injunction,

27 ¹ Current officer-holder Defendants were automatically substituted for original
 28 Defendants, pursuant to Fed. R. Civ. P. 25(d).

1 such as: equal protection based on marital status, procedural due process
2 regarding vagueness as to both providers and patients, procedural due process
3 based on state law rights, and the changed circumstances, including changes in
4 Nevada law that may impact these arguments. Parties should specify which
5 arguments are based on claims alleged in the complaint, and which, if any, may
6 require an amended complaint. The parties are free to raise other issues not
7 discussed here.

8 **Supplemental briefing is ordered as follows:**

9 Plaintiff shall have 30 days from the date of this order to file supplemental
10 briefing on the issues described herein, not to exceed 30 pages.

11 Defendants shall have 21 days from the date of Plaintiff's supplemental
12 briefing to file responsive briefing, not to exceed 30 pages.

13
14 Dated this 30th day of October, 2024.

15
16 
17

18 ANNE R. TRAUM
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28